IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.08.2014

CORAM

THE HON'BLE MR.JUSTICE R. SUDHAKAR
AND
THE HON'BLE MR.JUSTICE G.M. AKBAR ALI

C.M.A.No.976 of 2004

Commissioner of Income Tax,
Madurai .... Appellant

vs

M/s Shri Vishnu Shankar Mills Ltd
Post Box No.109,
PAC Ramaswamy Raja Road
Rajapalayam .... Respondent

Civil Miscellaneous Appeal filed under Section 260A of the Income Tax Act against the Order dated 30.3.2004 passed in ITA No.1024/Mds/97 on the file of the Income Tax Appellate Tribunal, Chennai.

For Appellant : Mr.M. Swaminathan

For respondent : Mr.J. Balachander
Mrs.Indumathi

JUDGMENT

(*Delivered by R. SUDHAKAR,J.,*)

The present Appeal is filed against the Order dated 30.03.2004 of the Income Tax Appellate Tribunal, Chennai,in ITA No.1024/Mds/97.

2. At the time of admission, the following substantial questions of law were formulated:

> *"1. Whether in the facts and circumstances of the case, the Tribunal was right in allowing a deduction of the amounts spent on replacement of machinery as current repairs?*
>
> *2. Whether in the facts and circumstances of the case, the Tribunal was right in allowing a deduction of the amounts spent on replacement of machinery as revenue expenditure?*
>
> *3. Whether in the facts and circumstances of the case, replacement of independent complete machinery can be treated as revenue expenditure?*

4. Whether in the facts and circumstances of the case, the Tribunal was right in allowing the deduction of the amounts paid to the Rajapalayam Mills Ltd., Employees Welfare Association for the construction of Kalyanamandapam as revenue expenditure?

3. On the matter being taken up for final hearing, the learned counsel on either side would comment upon the relevancy of substantial questions of law Nos.1 to 3 by pointing out that such fact or law touching upon those substantial questions of law was not the issue before the Tribunal itself and therefore, there is no need to determine questions of law Nos.1 to 3.

4. In view of the above joint submission, the questions of law Nos.1 to 3 are not necessary to be answered. It follows that the only question needs to be answered is the fourth question i.e.,

4. Whether on the facts and in the circumstances of the case, the Tribunal was right in allowiing the deductioin of the amounts paid to the Rajapalayam Mills Ltd., Employees Welfare Assocation for the construction of Kalyanamandapam as revenue expenditure?

5. The Assessment Year relates to 1994-1995. The respondent/assessee in this case paid an amount of Rs.6,00,000/-(Rupees six lakhs) to the workers on the occasion of Founder's day Centenary Celebration and that was treated as revenue expenditure. The Assessing Officer was of the view that the amount paid by the assessee for the construction of Kalyanamandapam along with other Group Companies for the benefit of workers is to be treated as Donation and it should not be treated as Revenue. Aggrieved against the said order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who confirmed the order passed by the Assessing Officer. Against which, the assessee preferred an appeal before the Tribunal.

6. The Tribunal, by the impugned order dated 30.3.2004, took a different view and held in favour of the Assessee, against which, the present appeal has been preferred by the Revenue.

7. It was pointed out by the learned counsel for the respondent/assessee that, in a similar case viz., M/s Rajapalayam Mills's case decided in Tax Case (Appeal) No.1008 of 2004 vide order dated 13.7.2011, on an identical question of law, the case of the Revenue was accepted. According to him, in that case, one of the sister companies

donated Rs.12,00,000/- for the very same purpose which was held by this court as "*not revenue expenditre and mere donation".* The relevant portion reads as under:

> *"12. As is evident from the contention taken before the Assessing Officer, the amount of Rs.12,00,000/- was paid by the assessee to the workers on the Founder's Centenary Celebration. Thus, it is evident that there was no business expediency or compulsion therein for the assessee to make payment to the Employees' Association. However, generous or good intention with which the assessee made such a donation on the eye of the Founder's Centenary Celebration, unless and until the said claim falls within the parameters of commercial expediency or business compulsion as held by the Supreme Court in the case of Commissioner of Income Tax, Madras I vs T.V. Sundaram Iyengar and Sons (P) Ltd reported in (1974) 94 ITR 428, the assessee's claim cannot be allowed for deduction therein under any provisions of the Act. In the decision reported in (1990) 186 ITR 276 in the case of Commissioner of Incomoe Tax, Madras vs T.V. Sundaram Iyengar and Sons (P) Ltd., this Court pointed out that the expenditure was incurred more as a matter of commercial expediency in pursuance of the tripartite agreement between the employer*

and the employee. This Court further pointed out that the agreement of the employer to contribute towards construction of the houses was the result of the business expediency qualifying for deduction as a revenue expenditure incurred wholly and exclusively for the purpose of the assessee's business.

15. As far as the present case is concerned, the facts are distinguishable from the decisions referred to above. The law declared by the Apex Court in both the cases was that unless and until there is business expediency in making out the expenditure, the claim could not be treated as revenue expenditure. Considering the fact that the said amount was paid to the Worker's Association on the occasion of Founder's Centenary Celebration and there being no other material to sustain the plea that it was only paid for having more efficient and contented labour force, we have no hesitation in holding that the amounts paid to the Rajapalayam Mills Ltd., Employees Welfare Asociation for the construction of Kalyana Mandapam is purely in the nature of donation and does not come under revenue expenditure.

8. It is also stated by the learned counsel for the assessee that Special Leave Petition filed by the assessee against the judgment is

dismissed by the Apex Court to the following effect:

" Petition (s) for Special Leave to Appeal
(Civil) ...../2012 (CC 21064/2011)

.....
Date:03.01.2012
.....
The Special Leave Petition is dismissed".

9. In view of the above position of law, the order of the Income Tax Appellate Tribunal is set aside and the appeal is allowed and the substantial question of law is answered in favour of the Revenue. No costs.

(R.S.J.,) (G.M.A.J.,)
18-08-2014

sr

Index:yes

website:yes

To

The Commissioner of Income Tax,
Madura

R. SUDHAKAR,J.,

AND

G.M. AKBAR ALI,J.,

sr

T.C.(A) No.976 of 2004

18.8.2014